IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDGIARH

Case No. RSA No. 969 of 1979

Date of decision : 27.9.2006

Chand Kaur ... Appellant

Versus

Kartar Singh and others ... Respondents

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Present: Mr. M.L.Sarin, Senior Advocate
with Mr. Hemant Sarin,Advocate
for the appellant.

Mr. S.S.Bhinder, Advocate
for the respondents.

...

RANJIT SINGH, J

Shrimati Chand Kaur is in appeal against judgment of reversal whereby the suit for possession decreed in her favour by the trial Court has been reversed by the first Appellate Court.

Substantial question of law in regard to the legal effect of deed of family settlement relied upon by the appellant and requirement of registration of such a deed and that of the relinquishment deed relied upon by the respondents to say that the appellant had relinquished her right would arise in the present appeal.

The facts, in brief, are that one Arjan Singh had 3 sons, named Kartar Singh, Sardara Singh and Modan Singh. Appellant, Chand Kaur is the widow of Modan Singh. Said Modan Singh had predeceased his father Arjan Singh. During his life time, Arjan Singh partitioned agricultural land owned by him in four equal shares amongst himself, his two sons and appellant-widow, Chand Kaur. Consequent upon this partition, each one of the persons referred above, was given separate possession of parcels of land falling to his/her share. It is in this manner

that appellant, Chand Kaur came to possess the suit land. This partition deed dated 23.4.1957 was reduced into writing and was produced on record as Exhibit A/1. As per the averments in the plaint, Arjan Singh was having 1/2 share in the land measuring 718 Kanals 18 Marlas and, thus, was holding 359 Kanals 9 Marlas of land. The appellant had further claimed in the suit that she gave the suit land to Arjan Singh and his sons (defendants) for cultivation on payment of Batai. Since the defendants did not pay the rent or Batai to the appellant, she approached the Revenue Court for recovery of the same. The defendants continued to cultivate the suit land of the appellant and were also shown as tenants at Will under her in Girdawri entries pertaining to the year 1963-64. The appellant, however, averred in the plaint that later in collusion with the Revenue Officials, the defendants got the entries changed in their favour which forced her to file the present suit leading to the present appeal.

The suit was hotly contested by the defendants. They denied the fact of partition, as alleged in the plaint. The defendants,inter-alia, have pleaded that neither Arjan Singh partitioned his land nor the suit land was made over to the appellant. It is stated that in any event, the appellant, vide agreement dated 3.4.1967, had relinquished her rights to get maintenance from Arjan Singh to which she was entitled to under law. Plea was that the appellant had no lawful title to the suit land and that the defendants were in possession of it since long. Other objections, relating to the suit being barred by principles of res judicata and that it was hit by limitation and that it suffered from non-joinder of necessary parties, were also raised.

On the pleadings of the parties, trial followed on the following issues :-

(1) Whether the plaintiff is the owner of the suit land or to what extent ? OPP

(2) Whether the suit is barred by the principles of res-judicata?OPD

(3) Whether the suit is within time ? OPP

(4) Whether the suit is bad on account of non-joinder of necessary parties ? OPD

(5) Whether the plaintiff has no cause of action ? OPD

(6) Relief.

In support of her claim, appellant produced one Kaur Singh as PW-1. He was Naib Panch of the Halqa R.Kalan. PW-1 deposed that the settlement between Chand Kaur, appellant and Arjan Singh, had been arrived at in his presence and that the terms of the said agreement were reduced into writing. PW-1 also proved the writing of the agreement in question dated 23.4.1957 as he was the marginal witness to the said agreement. A copy of this agreement was produced on record and marked Exhibit A/1.

The defendants had taken serious objection to admissibility of this writing in evidence on the ground that this was unstamped and unregistered. This objection of the defendants, however, was rejected by the trial Court after recording cogent reasons and dealing with the same in detail. The trial Court, instead of treating this writing, Exhibit A.1 as a partition deed, found it to be a gift deed and relied on this as such. In this regard, the trial Court first found that the objection to the admissibility of this document as having not been stamped and unregistered could not validly be made in view of the factual position. It is on record that this writing dated 23.4.1957 was produced in the Revenue Court in the suit filed by the appellant for recovery of arrears of rent. This deed was admitted as a deed of partition of agricultural land. Since this deed was found unstamped, stamp duty and penalty were charged. Against this, Kartar Singh-defendant had brought a revision petition in the Court of Collector at Bathinda where, on 30.5.1964 it was accepted to be a gift deed. It was also found that being a gift deed it ought to have been charged as such under the Stamp Act, 1899. In this background, the case was forwarded to Commissioner, Patiala Division for onward

transmission to Financial Commissioner, Panjab. Later the case was remanded to Collector, Bathinda for decision, who acting under Section 61 of the Stamp Act, 1899, held that Chand Kaur appellant was liable to pay Rs.200/- as stamp duty and Rs.20/- as penalty. Appellant-Chand Kaur was, accordingly, required to pay a sum of Rs.220/- less the amount she had already paid. Following the said order, the appellant had deposited this amount into the government treasury. The order passed by the Collector dated 29.8.1966 and the treasury challan (Mark 'C') (Exh. P-6 and P-7) are on record. In this view of the evidence, the trial Court found that the objection in regard to admissibility of this writing on the ground that it was unstamped could not be sustained.

Proceeding ahead and while dealing with the objection regarding requirement of registering this document, the trial Court found that no one had set up a case before it that the parties to the litigation constituted a Joint Hindu Family with Arjan Singh as its Karta. Trial Court observed that it had not been pleaded that immovable property in the hands of Arjan Singh was ancestral or coparcenary property. The Court also noticed that the appellant had not pleaded any custom governing the parties vide which Arjan Singh was competent to transfer this land amongst his sons by way of partition etc. during his life time. However, the writing clearly showed that he did transfer 1/4th share in the land to the appellant. It is in this background that this writing was treated as a gift deed which was also the finding returned by the Collector in his judgment referred to above (Exh. P-6). Another reason noticed by the trial Court to term this writing as a gift deed was the cumulative effect of proceedings in the rent case and the provisions of the Transfer of Property Act. It was noticed by the trial Court that Section 123 of the Transfer of Property Act was extended to the erstwhile State of Pepsu with effect from 15.5.1957 and, as such, prior thereto a gift of immovable property of the value of more than Rs.100/- could be made orally. Accordingly, on 23.4.1957, oral gift of this immovable property was permissible. It was also noticed that mode of a gift

was delivery of possession of the gift which was revealed from Khasra Girdawari entries, Exhs. D.8 and D.7. It is made out from the entries that appellant Chand Kaur was delivered possession of the suit land and Sardara Singh and Kartar Singh were cultivating the same as tenants at will under her. This fact can further be made out from the proceedings initiated by the appellant in the Revenue Court for recovery of rent when the defendants failed to pay the Batai. The order of Collector passed in this regard would show that the parties had arrived at a compromise in the proceedings in the rent case. It was urged that the appellant had withdrawn the case when some rent was paid to her on account of the compromise. This contention, as noticed by the trial Court, had gone unchallenged. Taking the facts and circumstances in totality, the trial Court came to the conclusion that the suit land had been gifted to the appellant and she had possessed the same as a donee (owner).

Defendants, on the other hand, had placed strong reliance on a deed dated 3.4.1967 which was brought on record through Mukhtiar Singh, DW-1 and Bachitar Singh, DW-2. As per the evidence, this agreement had been executed between the appellant on the one hand, and Arjan Singh, on the other. This contains a recital which was taken as admission on the part of the respondents by the trial Court to the effect that some land was given to Chand Kaur, appellant in view of maintenance. Objection in regard to the admissibility of this document on the ground of non-payment of proper stamp duty and want of registration was raised. Before dealing with this objection, the trial Court noticed that this could still be looked into for collateral purpose even if it was not properly stamped or not registered despite the said requirement. Considering this document for this collateral purpose, the trial Court placed reliance on the same to conclude that the suit land, in fact, had been gifted to appellant, Chand Kaur or was made over to her in lieu of maintenance. Relying upon the Explanation appended to Section 14(1) of Hindu Succession Act, 1956, it was held that Chand Kaur, appellant would hold

this property as its full owner. It was also noticed by the trial Court that there was no evidence to show that the terms of this gift deed contained any restriction or gave a restricted estate to the appellant. Accordingly, it was held that the provisions of Section 14(2) of Hindu Succession Act, 1956 were not attracted in this case. It was further held by the trial Court that non-registration of writing, Exhibit A-1 was inconsequential as the provisions of Section 123 of the Transfer of Property Act were not in force on the date this writing was made. Dealing with the submission that even in the absence of the applicability of the provisions of Section 123 of the Transfer of Property Act, this document was required to be compulsorily registered under Section 17 of the Indian Registration Act, it was held by the trial Court that the same could be looked into to ascertain the nature of possession of land and when the same was read in conjunction with the agreement dated 3.4.1967, Exhibit D-1 it would clearly reveal that the suit land in question was made over to the appellant in lieu of her maintenance rights. Accordingly, it was again reiterated that appellant would hold the said land as full owner in view of the Explanation given under Section 14(1) of the Hindu Succession Act.

The statement made on behalf of the defendants in regard to major portion of the suit land coming to the hands of the defendants as workers on being declared surplus out of land holding of Arjan Singh was also repelled on the ground that said order subsequently had been set at naught by Commissioner, Patiala Division. It was also noticed that the case was remanded by the Commissioner to the Collector for ascertaining the surplus area afresh. Thereupon, the Collector vide his order dated 28.7.1974 had held that consequent upon the death of Arjan Singh, no proceedings were required to be taken to find that the land had been declared surplus. The trial Court, thus, rightly observed that this order could not be referred to or relied upon as it did not exist in the eyes of law. Accordingly, it was held by the trial Court that appellant-Chand Kaur was the full owner of the suit land. The argument of defendants' counsel that appellant Chand

Kaur had relinquished her rights in the suit land on receipt of Rs.9,500/- as her life time maintenance advanced on the basis of agreement deed dated 3.4.1967, was also rejected by the trial Court on the ground that the appellant had become the full owner of this land much prior to the date of agreement dated 3.4.1967. It was further held that this agreement also required compulsory registration under Section 17(1) (b) of the Indian Registration Act. In view of the bar laid down under Section 49 of the Indian Registration Act, it was found that this agreement would have no effect whatsoever on the rights of the appellant.

The first Appellate Court, however, found fault with the finding returned by the trial Court. On the basis of plea raised before the trial Court, writing Exh.A/1 and D/1 produced by the respective parties were found to have been sufficiently proved. The Appellate Court further found that the provisions of Section 123 of the Transfer of Property Act did not apply when agreement, Exh.A/1 was executed and accordingly held that the oral gift of immovable property was permissible. The first Appellate Court, however, held that this deed would be covered under the provisions of Section 17 of the Indian Registration Act and would require compulsory registration. In this regard, reliance was placed on certain judgments noticed in the order. It was, accordingly, held that in view of the provisions of Section 49 of the Indian Registration Act, this could not be received in evidence of any transaction affecting such a property. The first Appellate Court also found fault with the finding of the trial Court whereby this deed had been termed as a gift deed. It was held that delivery of possession was essential in order to constitute a valid gift. As per the first Appellate Court, possession had not been shown to have been delivered to appellant-Chand Kaur. The Court did not place much reliance on the solitary entry in Khasra Girdwari for the year 1962-63 showing defendants to be cultivating the land under the appellant being a solitary entry. It was further observed that this was manipulated as the defendants had consistently been shown to be in possession of the suit land prior and subsequent

to the said entry. While referring to the fact of suit instituted by Chand Kaur for recovery of rent, the first Appellate Court held that the same was withdrawn without any adjudication on merits and termed this as good as having not been filed. The first Appellate Court also found that there was no evidence showing payment of rent at the time of compromise in this suit and, accordingly, held that there was no sufficient evidence to show that the appellant had been delivered possession of this land. On behalf of the appellant, it was argued before the first Appellate Court that the agreement, Exhibit A/1 being a family settlement or family arrangement arrived at to resolve the dispute of right and for preservation of amity, did not require compulsory registration. In this regard, judgment in the case of **Ram Charan Das** versus **Girja Nandini Devi and others, AIR 1960 SC 323** was relied upon. The first Appellate Court held that it was inclined to view this deed as a family arrangement. The Court then went on to hold that still it would require registration in view of the law laid down in **Maturi Pullaian and another** versus **Maturi Narasimhan and others**, **AIR 1966 SC 1838**. By referring to a judgment in the case of **Kale and others** versus **Deputy Director of Consolidation and others,** AIR 1976 SC 807, the Appellate Court noticed that family arrangement could be used for collateral purpose even if it had not been registered but still did not place any reliance thereon by saying that the appellant Chand Kaur was not in possession of any part of the suit land, a purpose for which it could be used. As per the first Appellate Court, this could also be used as estoppel by preventing the parties from resiling from the same having taken advantage under the arrangement. The Court also observed that this document will, rather, operate as estoppel against the appellant as by receiving a sum of Rs.9,500/- she could not be permitted to turn around and claim 1/4th share in the suit land. No such plea had ever been raised on behalf of the respondent either in the pleading or during the argument but still this was taken note of on the ground that this was a question of law that arises from the proceedings. The first Appellate

Court, accordingly reversed the finding of the trial Court and hence the present Regular Second Appeal.

I have heard counsels for the parties.

Mr. M.L.Sarin, learned Senior Counsel appearing on behalf of the appellant has raised a serious attack to the judgment and finding recorded by the first Appellate Court on a number of grounds. He has drawn my attention to substantial question of law that would arise in the present appeal. Counsel would submit that the status of document, mark 'A' and the requirement of its registration, accordingly, would be first substantial question of law that would require tobe determined. Similarly, it is also to be seen if the document, Exhibit D-1 which is relinquishment deed required registration and also if this document could be read to say that family arrangement, Exhibit A/1 had been recognized therein. As per counsel, the issue of appellant becoming full owner in terms of the provisions of Section 14(1) of Hindu Succession Act would arise in this case. It is not disputed before me that these questions of law do arise in this appeal and, accordingly, I would proceed ahead to determine the same.

Mr. Sarin would first submit that document, Exhibit A/1 was a family arrangement/settlement and, as such, it did not require registration. He would also contend that oral family settlement would not require registration as per the settled position of law. In support of this submission, counsel has placed reliance on the cases of **Ram Charan** versus **Girja Nandini**, AIR 1966 SC 323; **Shambhu Prasad Singh** versus **Most. Phool Kumari and others,** AIR 1971 SC 1337; **Kale and others** Versus **Deputy Director of Consolidation and others**, AIR 1976 SC 807; and **Roshan Singh and others** Versus **Zile Singh and others,** AIR 1988 SC 881.

The next submission of Mr. Sarin is that document, Exhibit D/1 which was admittedly a deed of relinquishment was required to be compulsorily registered. He would, accordingly, submit that this document could not be taken

into consideration being inadmissible in evidence as the same was not registered. Though not registered and thus could not be relied upon, yet the same could be looked into for collateral purpose especially to see if this document had recognized the family arrangement/settlement reflected in Exhibit A/1. In support of his contention that this document was compulsorily required to be registered, the counsel has drawn my attention to a number of judgments which are **Gurnam Singh** versus **Smt. Aas Kaur and others,** AIR 1977 Punjab and Haryana 103; **Shanti Devi and another** versus **Jagdish Parshad and another**, (1986-1) PLR 26; **Dina Ji and others** versus **Daddi and others**, AIR 1990 SC 1153. He has also referred to a case of **Smt. Pyar Kaur and others** versus **Smt. Harbans Kaur and others**, 1983 PLR 354 to urge that statement made regarding relinquishment of right in the land in dispute where the property is valued more than Rs.100/- cannot result in vesting a title in the other person. Apart from the above mentioned submission, Mr. Sarin would further contend that the appellant had become full/absolute owner of the property by virtue of provisions of Section 14(1) of Hindu Succession Act which has also been wrongly reversed by the first Appellate Court. He has placed reliance on **V.Tulasamma and others** versus **Sesha Reddy (dead) by LRs**, (1977) 3 Supreme Court Cases 99, which has recently been followed in the case of **Raghuvir Singh and others** versus **Gulab Singh and others**, JT 1998 (4) SC 579. In view of the aforementioned judgments, Mr. Sarin would say that the judgment of the first Appellate Court cannot be sustained and, as such, the judgment passed by the trial Court needed to be restored.

On the other hand, Mr.S.S.Bhinder appearing on behalf of the respondents would find fault with the judgment of the trial Court to support the view and the finding returned by the first Appellate Court. As per counsel for the respondents, appellant-plaintiff has been wavering in her stand and has some times termed Exhibit A/1 as a gift deed whereas subsequently she has described this as a family settlement. Counsel has further submitted that Exhibit A/1 is a vague and

unregistered document and hence cannot be relied upon. This document had also been termed as a gift deed and not as a family settlement and hence was required to be compulsorily registered. He would also contend that the appellant had failed to prove her possession over the property or that the possession thereof was delivered to her at the time of execution of this document. Reliance on one odd entry in the Girdawari, as per counsel, cannot be placed to prove possession of the appellant as was held by this Court in **Jai Ram** versus **Gram Panchayat Dehlka**, 1978 PLJ 43. While making submission, the counsel apparently made an attempt to resile from Exhibit D/1 on the ground that execution thereof was denied by the appellant.

Having regard to the rival contentions raised before me as above, it is first required to be seen whether the document, Exhibit A/1 can be termed as family settlement or not and whether this document required compulsory registration. It is the case of the appellant-plaintiff that Exhibit A/1 was a family settlement. Trial Court, however, for the reasons as was noticed in the earlier part of this judgment, had termed this document to be a gift deed. It was argued before the first Appellate Court and also before me that this writing, in fact, embodied a family arrangement which was brought about amongst the members of the same family to resolve the dispute and right for preservation of peace and amity in the family. It was, accordingly, contended that this did not require compulsory registration. The first Appellate Court, as can be seen from the finding recorded in para 13 of its judgment, had accepted this plea and had viewed the said deed as a family arrangement. The necessary observations in this case are " I too am inclined to view that the deed, mark A/1 does partake the character of family arrangement and is not a gift deed." Having held so, the first Appellate Court, however, went on to observe that this document still required compulsory registration. It was found by the first Appellate Court that the appellant had acquired title to the suit property through this document and there was no evidence of any oral agreement having

preceded the same. This finding of the first Appellate Court is under serious attack on behalf of the appellant.

In **Ram Charan's** case (supra), it was held that the Court gave effect to family settlement on the broad and general ground that its objective is to settle existing or future disputes regarding property amongst members of a family. In this judgment only, it was held that family settlement does not amount to transfer or creation of an interest in the property. In this regard, the observation of Hon'ble Supreme Court may be noticed :-

> " Here the transaction in question is a family settlement entered into by the parties bona fide for the purpose of putting an end to the dispute among family members. Could it be said that this amounts to a transfer of or creation of an interest in property ? For, unless it does, the action of Kadma Kuar would not fall within the purview of the aforesaid clause of S.37. In Mt. Hiran Bibi v. Mt. Sohan Bibi,AIR 1914 PC 44, approving the earlier decision in Khunni Lal v. Govind Krishna Narain, ILR 33 All 356 (PC), the Privy Council held that a compromise by way of family settlement is in no sense an alienation by a limited owner of family property. This case, therefore, would support the conclusion that the transaction does not amount to a transfer. Mr. Sinha, however, contends that the transaction amounts to creation of an interest by the ward in property which was under the superintendence of the Court of Wards and in support of his contention relies on Man Sikngh v. Nowlakhbati 53 Id App. 11: (AIR 1926 PC 2). In the first place once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest. For, as the Privy Council pointed out in Mst. Hiran Bibi's case, AIR 1914 PC 44 in a family settlement each party takes a share in the property by virtue of the independent title which

is admitted to that extent by the other parties. It is not necessary, as would appear from the decision in Rangasami Gounden v. Nachiappa Gounden, 46 Id App 72 : (AIR 1918 PC 196), that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection. "

Thus, in view of the above observation, it cannot be said that right was created in favour of the appellant for the first time on account of this family settlement, Exhibit A/1. It is required to be noticed that the first Appellate Court held that this document is a family arrangement and was aware of this judgment which the Court had noticed in the order under appeal before it. If this document is taken as a family arrangement or settlement which indeed it is, then it cannot be held that right in favour of the appellant was created for the first time through this document. There was a pre-existing right in favour of the appellant and this neither amounted to transfer in her favour or creation of her interest in the property for the first time.

There is no dispute with the proposition of law as laid down in the case of **Shambhu Prasad Singh's** case (supra) that a family arrangement is required to be considered as a whole and that it would not be sufficient if it is shown that there was actual or possible claim and a counter claim by the parties in the settlement whereas arrangement as a whole had been arrived at thereby acknowledging title in one to whom particular property falls on assumption (not actual existence of law) that he had an interior title therein. Once it is conceded that the Exhibit A/1 was a family arrangement, then it is required to be seen whether it needed to be compulsorily registered. Mr. Sarin would contend that Exhibit A/1 is a document or a memoranda prepared after the family arrangement

had already been made. He would further submit that the appellant and the other family members had an antecedent title, claim or interest in the property which was acknowledged through this settlement. He would, accordingly, say that this family arrangement or settlement, in this view of the matter, did not require compulsory registration.

In **Kale and others'** case (supra), it was held that the compromise was not required to be registered and further that even if the family arrangement was not registered, it can be used for collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement. In this judgment only, it was held that the distinction is required to be made between a document containing the terms and recital of the family arrangement under the document and a mere memoranda prepared after the family arrangement had already been made either for the purpose of record or for information of the Court for making necessary mutation. In regard to the requirement of registration of a family arrangement, counsel has also drawn my attention to the observations made in **Roshan Singh's** case (supra) which are to the following effect :-

> " The true principle that emerges can be stated thus: If the arrangement of compromise is one under which a person having an absolute title to the property transfers his title in some of the items thereof to the others, the formalities prescribed by law have to be complied with, since the transferees derive their respective title through the transferor. If, on the other hand, the parties set up competing titles and the differences are resolved by the compromise, there is no question of one deriving title from the other, and therefore, the arrangement does not fall with the mischief of S. 17 read with S. 49 of the Registration Act as no interest in property is created or declared by the document for the first time. As pointed out

by this Court in Sahu Madhol Das' case, it is assumed that the title had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. "

It has also been contended before me that having regard to recitals in the document, Exhibit A/1, it is to be taken as a family arrangement and the one which did not transfer any title or created any right and, accordingly, it was not required to be compulsorily registered. It was further submitted that the parties cannot be permitted to back out from the family arrangement once it is conceded that this arrangement was, in fact, made. It can be noticed from the finding returned by the first Appellate Court that both the documents, Exhibits A/1 and D/1 said to have been proved by satisfactory evidence. Thus, the only question which requires to be seen is whether the requirement of registering this document compulsorily was there or not. Having regard to the contents of the document and the fact that it has admittedly been treated as a family arrangement, it can be said that it did not create any right in favour of the appellant for the first time or did not lead to any transfer. In fact, she had a pre-existing right in this property and it was only recognized through this family arrangement. In view of the law laid down in the above noted judgment, I am inclined to hold that this document did not require compulsory registration. On the other hand, the document, Exhibit D/1 which has been relied upon by the respondents, to say that the appellant had relinquished her right in lieu of the maintenance, cannot be taken into consideration being inadmissible in evidence without registration. It has been held in the case of **Gurnam Singh** (supra) that any document which amounts to relinquishment of right in a property in favour of the other would be inadmissible in evidence if it is not registered since it is compulsorily required to be registered. It was held that the document of relinquishment being compulsorily registrable could not be utilized for proving a title. Similar view was expressed in the case of **Shmt. Shanti Devi's** case (supra). Then, in the case of **Dina Ji and Others** (supra), the Hon'ble

Supreme Court held that Section 17(1)(b) of the Registration Act clearly provided that document by which any right in immovable property is either assigned or extinguished will require registration. Where a document which is required to be registered and is not registered, the same cannot be admitted in evidence in view of provisions of Section 49 of the Indian Registration Act. Admittedly, the document, Exhibit D/1 has been placed on record as a relinquishment deed and is being relied upon as such. It can, thus, not be disputed that this document was required to be registered and had not been registered. Accordingly, it could not have been admitted in evidence. Perhaps realizing this difficulty, counsel for the respondents attempted to resile from this document by saying that even the appellant had not admitted the execution of the same. It is also required to be noticed that this document though not registered but in view of the observations made in different judgments, the same can be used for collateral purpose. It may be noticed that this document did recognize the existence of a family arrangement, Exhibit A/1. In fact, there is also a very strong evidence in this regard and that was the suit which the appellant had filed before the Revenue Court seeking recovery of rent which the respondents had not paid. This will also, to an extent, meet the criticism made by the first Appellate Court in regard to the lack of evidence showing possession of the appellant over the suit land. Once the suit filed by the appellant before the Revenue Court for recovery of rent was compromised, it would clearly indicate that the suit land was in possession of the respondents as tenants of the appellant which is also supported by the entry in the revenue record. Since the relinquishment deed cannot be admitted in evidence, the same having not been registered, the observation made by the first Appellate Court that it would operate as estoppel against the appellant, cannot be sustained. This plea even was not raised by the respondents before the first Appellate Court. Rather, the judgment referred to above, would show that the parties cannot be permitted to resile or go back from the family settlement. In this regard, judgment of this Court in the case

of **Ramji Dass etc.** versus **Dhanti Ram etc.**, 1979 Current Law Journal (Civil) (P&H) 229 can be seen with advantage. The cumulative effect of this would be that the family arrangement by its nature did not require registration and can be relied upon whereas relinquishment deed required compulsory registration which was not done and hence is to be termed as inadmissible in evidence.

In fact, I also find substance in the submission made by Mr. Sarin in regard to the appellant having acquired full ownership in respect of this property. In **V.Tulasamma's** case (supra), the Hon'ble Supreme Court held that Section 14 (1) of the Hindu Succession Act is wide in scope and ambit. As per this section any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner. The Hon'ble Supreme Court further observed that the words ' any property' are large enough to cover any kind of property and as per the Explanation, it would include movable and immovable property acquired by a Hindu female by inheritance or devise or at partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before or after marriage or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. Interpreting the word 'possession' in this Section, the Hon'ble Supreme Court observed in this case that ' it would mean the state of owning or having in one's hand or power. The Hon'ble Supreme Court went on to hold that it need not be actual or physical possession or personal occupation of property but may be possession in law. It can be even constructive possession in any form recognized by law provided that she has not parted with her rights and is capable of obtaining possession of the property. This view of the Supreme Court has recently been followed in the case of **Raghuvir Singh and others** (supra) where the Hon'ble Supreme Court was specifically dealing with the right arising on account of maintenance. It was held by the Supreme Court that right of maintenance of a Hindu widow, is a pre-existing right, was not created for the first time by any

statute. This right of maintenance, as per the Supreme Court, existed under the Shastric Hindu Law long before statutory enactment came into force. This right was observed to be flowing from social and temporal relationship between husband and wife and in case of a widow is a pre-existing right. As per Supreme Court, the passing of the Acts in this regard merely recognized the position as was existing under the Shastric Hindu Law and gave it a statutory backing. It was, accordingly, observed that where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to obtain possession of that property in lieu of her right to maintenance. It is in this background that it was further held that it is by force of Section 14(1) of the Hindu Succession Act that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. Commenting upon the provisions of Section 14 (2) of the Act, it was held that this applies to instruments, decrees, awards, gifts etc. which create an independent or new title in favour of a female for the first time. It has no application to cases where the instrument/document either declares or recognizes or confirms her share in the property or her pre-existing right to maintenance out of that property. Applying this principle, it can be said that it is an admitted position in the present case that the appellant being widow of pre-deceased son of Arjan Singh, had a pre-existing right of maintenance if nothing more. This right was recognized by document, Exhibit A/1. At the cost of repetition, it may be noticed that this document did not create right in her favour for the first time. This document is certainly one which declares or recognizes or confirms the share of the appellant in the property or her pre-existing right to maintenance. Even if it be assumed for the sake of discussion (though there is no such indication in the document) that the appellant had only a right of maintenance in this property, then also this right will result in creating a full and absolute ownership of the appellant in the said property in view of the provisions of Section 14 (1) of the

Hindu Succession Act and in terms of the law as laid down by the Supreme Court and as is noticed above. It may further be noticed that the right of maintenance is recognized by the respondents when they relied upon the relinquishment deed,Exhibit D/1. This document can be used for the collateral purpose of seeing the right of maintenance of the appellant though may not be admissible in evidence for use as relinquishment deed as it was not registered. It may also be noticed that the observation made by the trial Court that this deed of relinquishment, Exhibit D-1 needs to be discarded on the ground that the appellant had become full owner of the property much prior to the date of deed cannot be ignored and is well founded. The writing showing relinquishment of right of maintenance on receipt of amount would thus be meaningless as appellant was full owner of the property and did not have a right of maintenance alone which she could have relinquished.

In view of the detailed discussion as aforementioned, the judgment of the first Appellate Court cannot be sustained and is, accordingly, set aside. The present Regular Second Appeal is allowed and the judgment of the trial Court is restored. There shall, however, be no order as to costs.

(RANJIT SINGH)
JUDGE

September 27, 2006
RS